

Anderson v. XYZ Correctional Heath Services, 407 F.3d 674, 676-77 (4th Cir. 2005) citing Porter v. Nussle, 534 U.S. 516, 524 (2002) (“once within the discretion of the district court, exhaustion in cases covered by § 1997e(a) is now mandatory. All available remedies must now be exhausted; those remedies need not meet federal standards, nor must they be plain, speedy and effective. Even when the prisoner seeks relief not available in the grievance proceedings, notably money damages, exhaustion is a prerequisite to suit.” When considering a motion to dismiss for failure to exhaust, the district court must determine whether exhaustion was complete at the time of filing, not at the time when the court is rendering its decision on the Motion to Dismiss. Johnson v. Jones, 340 F.3d 624 (8th Cir. 2003). A Court may sua sponte dismiss a complaint for failure to exhaust if it is clear from the complaint that the inmate has not exhausted his administrative remedies. Anderson v. XYZ, 407 F.3d at 674. Here, while Plaintiff checked the box on his form Complaint indicating that he had exhausted his administrative remedies, it is clear to the Court from the grievance he attached to his Complaint that he did not. Indeed, Plaintiff attached a copy of his grievance in which he stated that he “plan[ned] to exhaust this matter and seek compensation” (Doc. No. 2.) Therefore, as admitted by Plaintiff, his grievance has not yet made its way through the three step grievance process. Because the PLRA requires that an inmate fully exhaust his administrative remedies before suing over prison conditions, and it is clear from the Plaintiff’s Complaint and attached grievance that he has not exhausted his administrative remedies prior to filing his Complaint, Plaintiff’s Complaint is dismissed without prejudice. Anderson v. XYZ Correctional, 407 F.3d 674, 682 (2005).

THEREFORE, IT IS HEREBY ORDERED that Plaintiff’s Complaint is dismissed without prejudice for failing to fully exhaust his administrative remedies prior to filing his

Complaint

SO ORDERED.

Signed: April 23, 2009

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

